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2                   IN THE UNITED STATES DISTRICT COURT  
3                   FOR THE EASTERN DISTRICT OF CALIFORNIA  
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7       MARK A. McKENZIE,

8                   Plaintiff,

CV F 05 0045 AWI WMW P

9                   vs.

\_\_\_\_\_ ORDER RE MOTION (DOC 16 )

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11     B. K. RUSH, et al.,

12                   Defendants.

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14     Plaintiff is a state prisoner proceeding pro se. Pending before the court is Plaintiff's  
15 motion for to stay this action pending resolution of a petition for writ of habeas corpus.

16     The complaint in this action claims that defendants violated Plaintiff's Due Process rights  
17 at a prison disciplinary hearing. On March 20, 2006, an order was entered, dismissing the  
18 complaint with leave to file an amended complaint. Specifically, the complaint was dismissed  
19 because Plaintiff had not alleged that his disciplinary conviction had been invalidated. Because  
20 Plaintiff's claim in this case, if proven, would necessarily invalidate his conviction at the prison  
21 disciplinary hearing, such a claim may not be brought in a civil rights action until that claim as  
22 been reversed, expunged or otherwise invalidated. Edwards v. Balisok, 520 U.S. 641, 644  
23 (1997).

24     Plaintiff has filed a petition for writ of habeas corpus challenging the validity of the  
25 prison disciplinary hearing. Plaintiff requests that this action be stayed pending the resolution of  
26

1 his habeas petition. Plaintiff is advised that because he has not alleged that his conviction has  
2 been invalidated, this action should be dismissed. The court will, however, recommend that this  
3 action be dismissed without prejudice to the filing of a new action once Plaintiff has had his  
4 conviction invalidated.

5 Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion to stay this action  
6 pending resolution of his habeas petition is denied.

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10 IT IS SO ORDERED.

11 Dated: June 20, 2006  
mmkd34

12 /s/ William M. Wunderlich  
UNITED STATES MAGISTRATE JUDGE